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11 Attorneys for Debtors

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 In re:

16 **DOYLE D. HEATON and**
17 **MARY K. HEATON,**

18 Debtors.

19 Case No.: 10-40297 MEH

20 Chapter 11

21 **STIPULATED SCHEDULING ORDER**
REGARDING THE DEBTORS'
OBJECTION TO CLAIM OF
INTERNAL REVENUE SERVICE
[CLAIM NO. 58-1] AND MOTION FOR
AN ORDER DETERMINING
CERTAIN TAX LIABILITY OF THE
ESTATE PURSUANT TO SECTION
505(a) OF THE BANKRUPTCY CODE

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24 Doyle D. Heaton and Mary K. Heaton, a married couple (the "Debtors") and the Internal
25 Revenue Service ("IRS, and with the Debtors, the "Parties") have met and conferred regarding a
26 scheduling order for discovery and pre-trial procedures in connection with the Debtors' *Objection to*
27 *Claim of Internal Revenue Service and Motion for An Order Determining Certain Tax Liability of*

the Estate Pursuant to Section 505(a) of the Bankruptcy Code (the “Objection and Motion”) [Dkt. No. 376], and hereby stipulate, by and through their counsel, as follows:

RECITALS

A. On January 11, 2010 (the “Petition Date”), the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Prior to the Petition Date, the Debtors were local real estate developers.

B. On May 17, 2010, the IRS filed a proof of claim (“Claim”), which asserts an unsecured priority claim under section 507(a)(8) of the Bankruptcy Code in the total amount of \$9,102,793.64 for the years 2007 through 2009.

C. On June 24, 2010, the Court signed an order confirming the *First Amended Joint Plan of Liquidation Proposed by the Debtors* (the “Plan”). The effective date of the Plan was July 15, 2010. The Plan has been substantially completed and remains in full force and effect.

D. On March 29, 2013, following an examination and report by the IRS regarding the Debtors' tax liabilities and refunds for the years 2003 through 2009, and written protest by the Debtors which was duly considered by the IRS, the IRS issued a statutory notice of deficiency ("SND"). The SND asserts that the Debtors owe additional income taxes of \$1,579,936 and penalties of \$315,987.20, for a total liability to the IRS of \$1,895,923.20 for the years in question.

E. On June 4, 2013, the Debtors filed their Objection and Motion for a determination that the Debtors and their estate are not liable for the amounts asserted in the SND, the Claim, or any amount, because they incurred numerous “worthless losses” that are subject to deduction pursuant to Internal Revenue Code section 165(a).

F. On June 26, 2013, the IRS filed its *Response to Debtors' Objection to Claim of Internal Revenue Service [Claim No. 58-1] and Motion for an Order Determining Certain Tax Liability of the Estate Pursuant to Section 505(a) of the Bankruptcy Code* [Dkt. No. 384] (“Response”). The IRS contends that the partnership interests from which certain net operating losses arose were not worthless in the years claimed and, therefore, were not allowable losses under 26 U.S.C. 165 in those years.

1 G. On July 11, 2013, the Parties appeared for an initial hearing before the Court, which
2 was deemed a status conference.

3 NOW THEREFORE, the Parties have met and conferred and hereby stipulate and agree:

4 **SCHEDULING ORDER**

5 1. The Parties shall disclose expert witnesses, if any, together with written reports
6 required by Fed. R. Civ. P. 26(a)(2)(B), no later than September 13, 2013. The Parties will
7 thereafter confer regarding any depositions of such experts to be scheduled and completed during the
8 next two weeks, prior to the close of discovery.

9 2. The Parties shall file cross-motions for summary judgment, including a joint
10 statement of undisputed facts, if possible, by October 10, 2013.

11 3. The Parties shall complete all discovery, including depositions of any expert
12 witnesses, no later than October 30, 2013.

13 4. In lieu of privilege logs, and in an effort to minimize delays and unnecessary expense,
14 responding parties may provide a general description of the categories of documents being withheld
15 and the basis for doing so, sufficient in detail to determine whether there is adequate basis for
16 invoking the privilege or protection. Upon request and if necessary, the responding party will
17 provide a timely privilege log of withheld documents.

18 5. The Parties may submit direct testimony by declaration prior to trial, subject to the
19 availability of such witnesses for cross-examination in person at trial. All exhibits or documentary
20 support that are proposed as evidence (except those related to rebuttal or impeachment) shall also be
21 submitted at such time.

22 6. The Parties agree to effectuate service of all pleadings and discovery by email and
23 first class mail.

24 7. The Parties agree to a pre-trial status conference in mid-November 2013 and a one-
25 day trial to be scheduled in December 2013, subject to the Court's availability and instruction.

26 8. The schedule set forth herein may be modified by agreement of the Parties with the
27 consent of the Court.

1 Dated: July 10, 2013

PACHULSKI STANG ZIEHL & JONES LLP

2 By /s/ Debra Grassgreen
3 Debra Grassgreen
4 Attorneys for Debtors

5 -and-

6 WAGNER KIRKMAN BLAINE
7 KLOMPARENS & YOUNG LLP
8 Minna C. Yang

9 Dated: July 10, 2013

10 UNITED STATES ATTORNEY

11 By /s/ Cynthia Stier
12 Cynthia Stier
13 Assistant United States Attorney
14 Tax Division